THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

+ Writ Petition No.1597 of 2007

% Dated 10.07.2007

S.S.Enterprises.

....Petitioner

$ Southern Power Distribution Company of A.P. Limited and others.

....Respondents

! Counsel for the petitioner : Sri K.Raghuveer Reddy
^ Counsel for respondents 1 to 4 : Sri O.Manohar Reddy
^ Counsel for respondent 5 : Sri J.Sreenivas Rao

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? Cases referred:

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

W.P.No.1597 of 2007

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Between:

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.. PETITIONER

AND

Southern Power Distribution Company of A.P. Limited and others.
..RESPONDENTS

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

W.P.No.1597 of 2007

ORDER:

The petitioner was awarded the contract of recording meter readings and issuance of consumption charges bills on the spot, by the respondents-Company initially on 01.01.2003 to be in force up to 01.10.2005. After expiry of that term, the contract was extended from 02.10.2005 to 01.10.2008.

The Superintending Engineer, first respondent herein issued a show cause notice, dated 30.11.2006, to the petitioner, pointing out certain lapses. It was served on the petitioner on 19.12.2006. The petitioner claims to have submitted its reply, dated 17.01.2007, denying the allegations and explaining the various alleged lapses mentioned in the show cause notice. The petitioner was served with a letter, dated 24.01.2007, through which, the first respondent terminated the contract. The same is challenged in this writ petition.

It is stated that none of the points urged in the explanation, dated 17.01.2007, were adverted to in the impugned letter, and the contract was terminated, only

with a view to accommodate a person of choice of the first respondent.

The first respondent filed a counter affidavit. It is stated that several lapses on the part of the petitioner, in the matter of recording meter readings and issuance of consumption charges bills, were noticed, and they were sated in the show cause notice. It is alleged that the petitioner did not submit its explanation within the stipulated time and in that view of the matter, an order of termination was passed on 19.01.2007. According to the first respondent, after receipt of the order, dated 19.01.2007, the petitioner submitted its explanation and the same was dealt with through the impugned letter, dated 24.01.2007.

In its counter affidavit, the 5th respondent states that the first respondent followed the prescribed procedure, while terminating the contract of the petitioner and the work has since been assigned to it.

Heard Sri K.Raghuveer Reddy, learned counsel for the petitioner, Sri O.Manohar Reddy, learned Standing Counsel for respondents 1 to 4 and Sri J.Sreenivas Rao, the learned counsel for the 5th respondent.

The contract, that was initially awarded to the

petitioner up to October 2005, was extended till October 2008. The first respondent issued a show cause notice, dated 30.11.2006, pointing out certain deficiencies. It was served on the petitioner on 19.12.2006. It is stated that the explanation was submitted on 17.01.2007. According to the petitioner, except the letter, dated 24.01.2007, no other proceedings were served upon it. It reads as under:

> *"It is once again informed that and your reply has also examined with reference to the rules of the Company. Your performance is not at all satisfactory.*
>
> *Hence your agreement No.43 (Rev.) 2005-2006 of Nuzvid (Town) is here by terminated in view of the non performance of the work of taking of meter readings and issue of CC bills on spot at consumer premises with hand held computer in the operation section Nuzvid (Town). Further you are requested to continue the work until another agency may take up the work."*

From this, it is evident that the explanation, dated 17.01.2007, was received by the first respondent on 20.01.2007. Mention is also made to the letter, dated 19.01.2007, said to have been issued by the first respondent. However, in his counter affidavit, the first respondent stated that he received the explanation on 19.01.2007. This assumes significance, on account of the fact that the first respondent passed order on 19.01.2007, terminating the contract of the petitioner, on

the ground that no explanation was received. This serious discrepancy remains unexplained.

Be that as it may, the manner, in which the first respondent handled the matter, is far from satisfactory. If there were any lapses on the part of the petitioner, it was always open to the first respondent to issue show cause notice and take further action, depending on the nature of explanation that may be offered by the petitioner. Further, whenever a show cause notice is issued, the authority concerned is required to keep the matter open and form an opinion, only after consideration of the explanation.

In the instant case, in the show cause notice, dated 30.11.2006, as many as six lapses were pointed out against the petitioner. However, in the concluding portion of the notice, the first respondent observed as under:

> "*In view of the non performance and unsatisfactory work of the spot billing agency it is decided to terminate the agreement of the Nuzvid (Town) section. Hence the Agency may offer their remarks on the above for taking further action.*"

Once, it is decided to terminate the agreement, the issuance of show cause notice virtually became superfluous and an empty formality. Such a course cannot be permitted in law.

By issuing a fresh letter, dated 24.01.2007, the first respondent virtually rendered the letter, dated 19.01.2007, issued by him terminating the contract, nugatory. By 24.01.2007, the first respondent had the explanation offered by the petitioner. Therefore, he was under obligation to examine the same, with reference to the allegations contained in the show cause notice. There is no whisper about the allegations or the explanation offered in response thereto. Therefore, the whole exercise is contrary to the settled principles of law. The contract awarded in favour of the 5th respondent cannot be sustained in law, in view of the illegality committed in terminating the contract of the petitioner.

Another aspect of the matter is that while awarding the contract in favour of the 5th respondent, no tenders were called for and they were awarded only on nomination basis. Even this is contrary to the settled principles and practice of law. The first respondent must have called for tenders from the intending parties and only on being satisfied about the competitive rates and performance of the Agency, the contract ought to have been awarded.

For the foregoing reasons, the writ petition is allowed and the proceedings issued by the first

respondent, terminating the contract of the petitioner, are set aside. In view of the fact that the first respondent indicated in the show cause notice itself that he has decided to terminate the contract, the show cause notice is also set aside. It is, however, left open to him to issue show cause notice to the petitioner and pass reasoned orders in accordance with law, after considering the explanation that may be offered by the petitioner. There shall be no order as to costs.

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10.07.2007

Note: L.R.Copy to be marked.

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